

ORDINANCE 2007- 21 -CM

**AN ORDINANCE TO VACATE A PORTION OF THE  
WILSON BRANCH OF THE S.W. ELLIOTT REGULATED DRAIN  
TO THE TREECE MEADOWS RELIEF DRAIN EASEMENT**

Be it ordained by the County Commissioners of Tippecanoe County, Indiana:

- 1) That the following portion of the Wilson Branch of the S.W. Elliott Regulated Drain to the Treece Meadows Relief Drain Easement, more fully described on Exhibit A attached hereto and made a part hereof, is hereby vacated.
- 2) This Ordinance shall be in full force and effect from and after its passage.

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on first reading this 4<sup>th</sup> day of June, 2007, by the following vote:

VOTE

+

+

-

BOARD OF COMMISSIONERS OF  
TIPPECANOE COUNTY

KD Benson  
KD Benson, President

John Knochel  
John Knochel, Vice President

absent  
Ruth Shedd, Member

ATTEST:

Jennifer Weston  
Jennifer Weston, Auditor of  
Tippecanoe County

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER. 6/05/07

Jennifer Weston  
AUDITOR OF TIPPECANOE CO.

## **EXHIBIT A**

### **Partial Easement Vacation Description:**

The partial vacation of the easterly forty (40) feet of the northern 992.14 feet of the existing ninety (90) foot drainage easement recorded as Document Number 9210097 in the Office of the Tippecanoe County Recorder, said easement being in part of the east half of the Southeast Quarter of Section 26, Township 23 North, Range 4 West, Fairfield Township, Tippecanoe County, Indiana, more completely described as follows:

Said easement vacation containing 0.91 acres, more or less.

STATE OF INDIANA )  
 )  
COUNTY OF TIPPECANOE )

BEFORE THE TIPPECANOE COUNTY  
COMMISSIONERS and the TIPPECANOE  
COUNTY DRAINAGE BOARD

**PETITION FOR PARTIAL VACATION  
OF THE WILSON BRANCH OF THE S.W. ELLIOTT REGULATED DRAIN  
TO THE TREECE MEADOWS RELIEF DRAIN EASEMENT**

Cascada Professional Park, LLC respectfully petitions the Tippecanoe County Drainage Board and the Board of Commissioners of Tippecanoe County, Indiana, and shows the following:

- 1) This Petition is made pursuant to IC 36-7-3-12.
- 2) Petitioner is the owner of the land described on Exhibit A attached hereto and made a part hereof.
- 3) Petitioner requests partial vacation of the Wilson Branch of the S.W. Elliott Regulated Drain to the Treece Meadows Relief Drain Easement on the real estate described on Exhibit B attached hereto and made a part hereof.
- 4) No utilities have been placed on said area proposed to be vacated.
- 5) The names and addresses of the abutting land owners are listed on Exhibit C attached hereto and made a part hereof.
- 6) This partial vacation is necessary because the property shown on Exhibit A is being rezoned from commercial to a residential use. In order to construct a dwelling unit and provide an adequate rear yard on each lot, a vacation of a portion of the legal drain is required.
- 7) Exhibit D consists of a survey depicting the portion of the legal drain to be vacated.
- 8) A proposed Ordinance is attached hereto as Exhibit E.

WHEREFORE, Petitioner prays for an ordinance of partial vacation of the form attached hereto.

TIPPECANOE COUNTY  
SURVEYOR OFFICE

APR 12 2007

RECEIVED

AG

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

BOARD OF COMMISSIONERS OF  
TIPPECANOE COUNTY

VOTE

\_\_\_\_\_

\_\_\_\_\_  
KD Benson, President

\_\_\_\_\_

\_\_\_\_\_  
John Knochel, Vice President

\_\_\_\_\_

\_\_\_\_\_  
Ruth Shedd, Member

ATTEST:

\_\_\_\_\_  
Jennifer Weston, Auditor of  
Tippecanoe County

Presented to the Tippecanoe County Drainage Board and approved this 2<sup>nd</sup> day of May 2007, 2007.

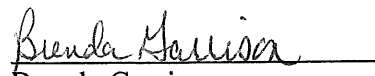
TIPPECANOE COUNTY DRAINAGE  
BOARD

  
\_\_\_\_\_  
KD Benson, ~~President~~ MEMBER

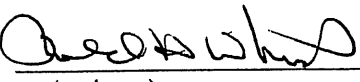
  
\_\_\_\_\_  
John Knochel, ~~Vice~~ President

Absent  
\_\_\_\_\_  
Ruth Shedd, ~~Member~~ VICE PRESIDENT

ATTEST:

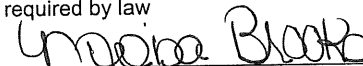
  
\_\_\_\_\_  
Brenda Garrison,  
Recording Secretary

CASCADA PROFESSIONAL PARK, LLC

By:   
(written)  
Ronald W. Whistler  
(printed) (title)

This instrument prepared by Daniel A. Teder of the firm of REILING TEDER & SCHRIER, 415  
Columbia Street, Suite 3000, P. O. Box 280, Lafayette, Indiana 47902, Telephone: (765) 423-5333  
Fax: (765) 423-4564, E-mail: [dat@rtslawfirm.com](mailto:dat@rtslawfirm.com)

I affirm, under the penalties for perjury, that I  
have taken reasonable care to redact each  
Social Security number in this document, unless  
required by law

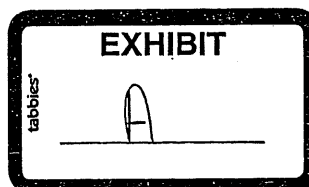


**Overall Rezone  
Cascada Professional Park, LLC  
Parent Tax Key # 156-08119-0067 & 156-08119-0012**

A part of the Cascada Professional Park, LLC real estate as described in Document Numbers 05-009099 and 06-002569 in the Office of the Recorder of Tippecanoe County and located in the Southeast Quarter of Section 26, Township 23 North, Range 4 West, Fairfield Township, Tippecanoe County, Indiana and being more completely described as follows:

Commencing at a Berntsen A1NB monument marking the location of the southeast corner of said Southeast Quarter; thence North 01°-14'-41" West, along the eastern line of said Southeast Quarter, 50.00 feet to 5 /8 inch diameter rebar found with plastic yellow cap stamped "TBIRD FIRM #0052" (hereinafter referred to as rebar found) on the 50 foot northern right-of-way line of McCarty Lane as described in Document Numbers 05-002919 and 05-002921 in said Office of the Recorder; thence South 89°-16'-04" West, along said right-of-way line, 1,332.54 feet to a rebar found on the eastern line of Treece Meadows Subdivision, Section Two, Part Two as per the plat thereof recorded in Plat Cabinet A, Slide 86 in said Office of the Recorder; thence North 01°-18'-28" West, along the eastern line of said Treece Meadows Subdivision Section Two, Part Two and Treece Meadows Subdivisions Section Two, Part One; Part Two; and Section Three as per their plats thereof recorded as Plat Book 14, Page 29, Plat Book 14, Page 7, and Plat Book 14, Page 18 respectively in said Office of the Recorder, a distance of 1,637.16 feet to the POINT OF BEGINNING; thence continuing North 01°-18'-28" West, along the eastern lines of said Treece Meadows Subdivisions, 992.14 feet to the northern line of said Southeast Quarter; thence North 89°-23'-28" East, along said northern line, 1,335.48 feet to a Berntsen monument marking the location of the Northeast Corner of said Southeast Quarter; thence South 01°-14'-41" East, along the eastern line of said Southeast Quarter, 175.70 feet; thence South 89°-23'-28" West, 281.37 feet; thence South 01°-14'-41" East, 804.74 feet; thence South 88°-45'-19" West, 1052.95 feet to the POINT OF BEGINNING, containing 24.99 acres, more or less, of which 8.13 acres exists from Tax Key Number 156-08119-0012 and 16.86 acres exists from Tax Key Number 156-08119-0067.

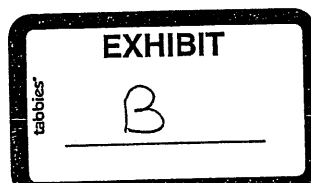
SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.



**Partial Easement Vacation Description:**

The partial vacation of the easterly forty (40) feet of the northern 992.14 feet of the existing ninety (90) foot drainage easement recorded as Document Number 9210097 in the Office of the Tippecanoe County Recorder, said easement being in part of the east half of the Southeast Quarter of Section 26, Township 23 North, Range 4 West, Fairfield Township, Tippecanoe County, Indiana, more completely described as follows:

Said easement vacation containing 0.91 acres, more or less.



## EXHIBIT C

Names and addresses of owners of property and the COUNTY AUDITOR'S KEY NUMBER of that property adjacent to the subject property.

<u>KEY NUMBER</u>	<u>OWNER'S NAME</u>	<u>ADDRESS</u>
158-17300-0139	New Horizons I, LLC c/o David A. Rosenthal	P.O. Box 408 Lafayette, IN 47902
156-05813-0140	Barbara J. Dienhart	30 Tuscany Ct. Lafayette, IN 47905
156-05813-0130	Hassan A. Yaghoubi	34-36 Tuscany Ct. Lafayette, IN 47905
156-05813-0129	Timothy M. C. Labreche and Susan L. Dieterlen	1257 Island Dr., #202 Ann Arbor, MI 48105
156-05813-0118	John M. and Carolyn A. Stinson	40 Sonoma Ct. Lafayette, IN 47905
156-05812-0240	Vineyards Subdivision Homeowners Association, Inc.	P.O. Box 4476 Lafayette, IN 47903
156-05812-0031; 156-05812-0230	D & D, LLC	P.O. Box 2474 West Lafayette, IN 47996
156-05812-0020	James R. Kiracofe	P.O. Box 4823 Lafayette, IN 47903
156-05812-0010	Jon T. Austin	625-629 Vineyard Ct. Lafayette, IN 47905
156-05811-0340	Joe Bill Royal	235 Eastland Dr. Lafayette, IN 47905
156-05811-0330	William T. & Gertrude E. Godby c/o Godby Apartments	P.O. Box 755 Lafayette, IN 47902
156-05809-0221	Primich Properties, LLC	6000 Southport Rd. Portage, IN 46368
156-08109-0242	Thomas A. Albrechts c/o Remax	2 N. 9 <sup>th</sup> St. Lafayette, IN 47901

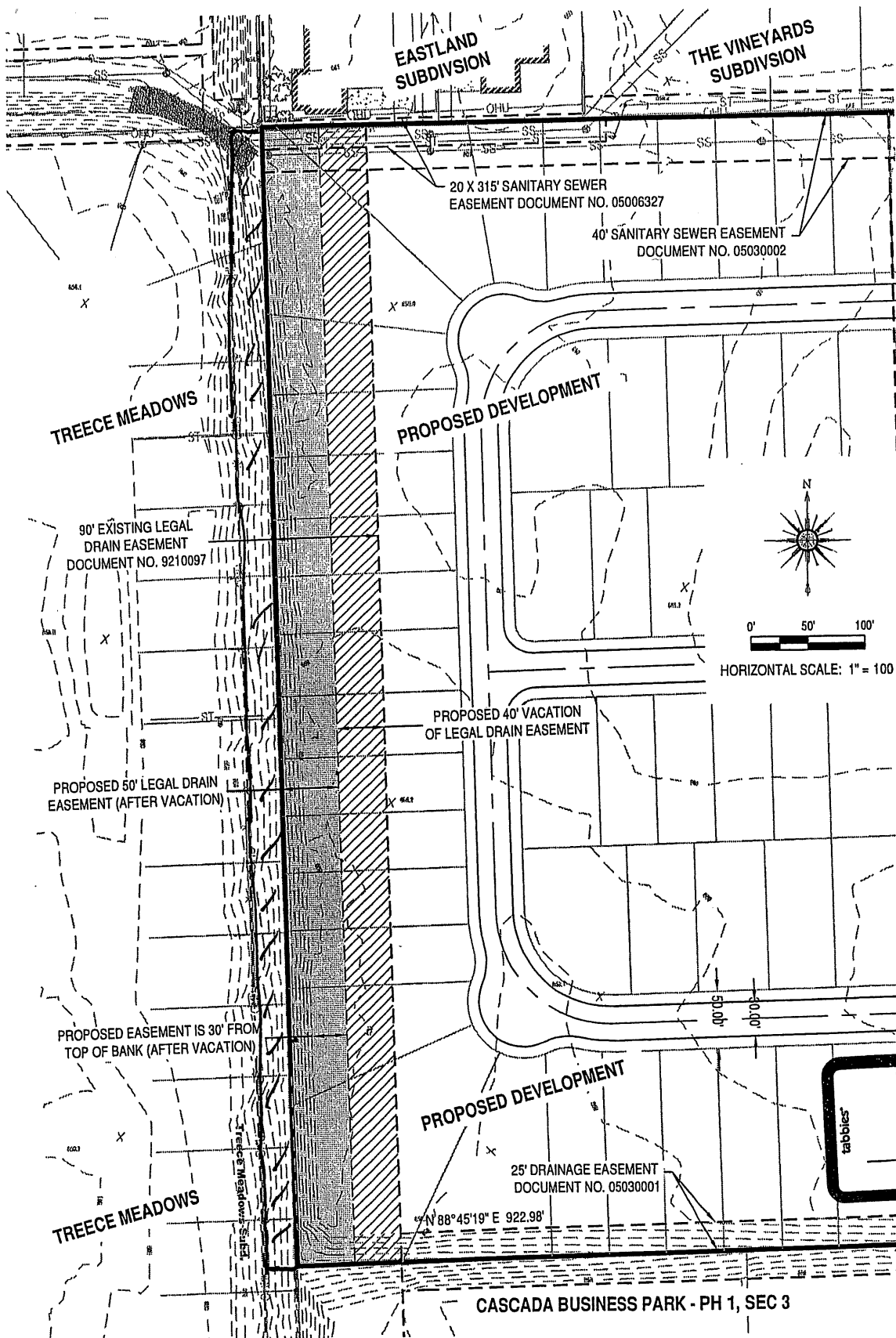


156-08109-0253	Maurice P. & Larry S. Roberts	7844 E. 700 S. Lafayette, IN 47905
156-08109-0231	Industrial Federal Credit Union	1115 Sagamore Pkwy. S. Lafayette, IN 47905
156-08109-0220	Kimberly & Michael Jones	725 Julia Ln. Lafayette, IN 47905
156-08109-0210	Gaitlin Thomas & Mathew Henson	729 Julia Ln. Lafayette, IN 47905
156-08109-0209	Lola M. Miller	733 Julia Ln. Lafayette, IN 47905
156-08109-0198	Amy J. Caldwell-Fishback & Michael Fishback	737 Julia Ln. Lafayette, IN 47905
156-08111-0900	Samuel C. Perez & Belen Clemente	741 Julia Ln. Lafayette, IN 47905
156-08111-0890	The Emond Family Limited Partnership c/o Joseph L. Emond	130 Bryn Mawr Ct. Lafayette, IN 47905
156-08111-0889	William A. Whistler	749 Julia Ln. Lafayette, IN 47905
156-08111-0878	David M. Fritz	753 Julia Ln. Lafayette, IN 47905
156-08111-0867	Elizabeth A. Plantenga	757 Julia Ln. Lafayette, IN 47905
156-08111-0856	Michael E. & Eyvonne S. Whitus	761 Julia Ln. Lafayette, IN 47905
156-08111-0845	Linda K. Peters	765 Julia Ln. Lafayette, IN 47905
156-08111-0834	Olga Sego	801 Julia Ln. Lafayette, IN 47905
156-08111-0823	Donald K. Kaldahl	5628 Frederick Dr. Lafayette, IN 47905

158-08119-0036

Cascada Professional Park, LLC

P.O. Box 1071  
Lafayette, IN 47902



EXHIBIT

D



**TBIRD**  
Design Services Corporation  
Engineering & Surveying  
105 NORTH 10TH STREET • LAFAYETTE, INDIANA  
phone: (765) 742-1900 • fax: (765) 742-1905  
www.tbirddesign.com

## EASEMENT VACATION EXHIBIT

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF  
SECTION 26, TOWNSHIP 23 NORTH, RANGE 4 WEST,  
FAIRFIELD TOWNSHIP, TIPPECANOE COUNTY, INDIANA

PROJECT:  
06035

DATE:  
3/26/2007

CHECKED BY:  
JCN

DRAWN BY:  
JRF

DRAWING FILE:  
LEGAL DRAIN EASEMENT VACATION.DWG

SHEET:  
1 of 1

## DRAINAGE EASEMENT AGREEMENT

INB NATIONAL BANK, (formerly Lafayette National Bank),  
Trustee of a certain Declaration and Agreement of Trust dated  
April 24, 1985, established by Russell H. Gipe, Settlor, and INB  
NATIONAL BANK (formerly Lafayette National Bank), Trustee of a  
certain Declaration and Agreement of Trust dated April 25, 1985,  
established by Marjorie S. Gipe, Settlor, hereinafter  
collectively referred to as Grantors, grant and convey to City of  
Lafayette, Indiana, Grantee, or its assigns, for the sum of One  
Dollar (\$1.00) and other valuable considerations, receipt of  
which is hereby acknowledged, the following for a perpetual,  
non-exclusive easement for water drainage and necessary  
construction, reconstruction and maintenance on the following  
real estate ("easement real estate") in Fairfield Township,  
Tippecanoe County, Indiana, described on the attached Exhibit  
"A", and by this reference made a part hereof.

This easement is intended for water drainage and necessary  
construction and maintenance for the proposed Treece Meadows  
Regulated Drain pursuant to applicable Indiana Statutes. This  
drainage easement may be assigned at any time to Tippecanoe  
County, Indiana, or the Tippecanoe County Drainage Board, or any  
of them.

This Drainage Easement Agreement is subject to the following  
terms and conditions, to-wit:

### I USE BY OWNER (GRANTOR)

The owners of land over which the easement runs may use the  
land in any manner consistent with the proper operation of the

drain. Permanent structures may not be placed on the easement without the written consent of the City of Lafayette or its assigns. Temporary structures may be placed upon or over the easement without the written consent of the Board, but shall be removed immediately by the owner when so ordered by the City. Crops grown on an easement are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the City or their representatives. Trees, shrubs and woody vegetation may not be planted in the easement without the written consent of the City, and trees and shrubs may be removed by the City if necessary to the proper operation or maintenance of the legal drain.

## II CONDUCT OF GRANTEE

All persons exercising the right given Grantee by this easement, to the extent possible, shall use due care to avoid damage to crops, fences, building and other structures outside of the easement, and to crops and approved structures inside the easement. The City shall give prior oral or written notice of the entry on the land to the property owner of record at the time of entry which notice must state the purpose for the entry.

## III RIGHT TO TAP ON TO LEGAL DRAIN

GRANTORS and subsequent Owners of the eighty eight acres of land now owned by Grantors which drains into the Treece Meadows Legal Drain shall have the right to connect private or mutual drains draining any part or all of such eighty eight acres to

such proposed Treece Meadows Legal Drain without payment of any fee for such purpose. However, such Owners shall comply with the requirements of I.C. 36-9-27-17(b) and other applicable laws and meet the requirements of the City or County Code in effect at the time of such connection.

#### IV LIMITATION OF EASEMENT AREA

The plans and specifications of the engineer for the Drainage Project that has given rise to this Drainage Easement Agreement provides for a ditch to be constructed within the ninety foot (90') easement area which ditch construction will result in a twenty-five foot (25') strip measured at right angles to the top edge of the bank along the east side of the ditch. Consequently, pursuant to Indiana Code 36-9-27-33(e), which statute authorized the Drainage Board to reduce the statutory easement to a strip twenty-five feet (25') measured at right angles to the top edge of the bank, any easement right acquired by the Tippecanoe County Drainage Board under the terms of this easement or pursuant to any subsequent assignment of this easement or pursuant to statutory rights under Indiana Code 36-9-27-33(e), are, by agreement and consent, reduced to the twenty-five foot (25') strip measured at right angles to the top edge of the bank along the east side of the ninety foot (90') easement area, and no consideration has been paid for any easement other than that described herein.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this 28th day of April, 1992.

INB NATIONAL BANK,  
(formerly Lafayette National Bank),  
Trustee of a certain Declaration  
and Agreement of Trust dated  
April 24, 1985, RUSSELL H. GIPE,  
Settlor.

By: J. Thomas Servies  
J. Thomas Servies,  
Vice President

Attest:

Shirley M. Osterling  
Shirley M. Osterling  
Assistant Vice President  
and Trust Officer

INB NATIONAL BANK,  
(formerly Lafayette National Bank),  
Trustee of a certain Declaration  
and Agreement of Trust dated  
April 24, 1985, MARJORIE S. GIPE,  
Settlor.

By: J. Thomas Servies  
J. Thomas Servies,  
Vice President

Attest:

Shirley M. Osterling  
Shirley M. Osterling  
Assistant Vice President  
and Trust Officer

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF TIPPECANOE)

Before me, the undersigned, a Notary Public in and for said County and State, this 28th day of April, 1992, personally appeared INB NATIONAL BANK (formerly Lafayette National Bank), Trustee of a certain Declaration and Agreement of Trust dated April 24, 1985, RUSSELL H. GIPE, Settlor, and INB NATIONAL BANK (formerly Lafayette National Bank), Trustee of a certain Declaration and Agreement of Trust dated April 24, 1985, MARJORIE S. GIPE, Settlor, by Thomas Servies, as Vice President and Shirley M. Osterling, as Vice President and Trust Officer, who acknowledged the execution of the foregoing Drainage Easement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal. I am a resident of Tippecanoe County, State of Indiana.

Arlene M. Bush  
Arlene M. Bush, Notary Public  
Resident of Tippecanoe County, IN.

My Commission Expires:  
April 1, 1993

DATED: \_\_\_\_\_

APPROVED:

TIPPECANOE COUNTY DRAINAGE BOARD

Nola Gentry  
NOLA GENTRY

Hubert Yount  
HUBERT YOUNT

Keith M. McMillin  
KEITH MCMILLIN

Attest:

Dorothy M. Emerson  
~~Betty J. Michael~~ Dorothy M. Emerson  
Executive Secretary  
(Title)

STATE OF INDIANA )  
COUNTY OF TIPPECANOE )

Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of April, 1992, personally appeared the TIPPECANOE COUNTY DRAINAGE BOARD by Nola Gentry, Hubert Yount, Keith McMillin and Betty J. Michael, who ACKNOWLEDGED and APPROVED the foregoing Drainage Easement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

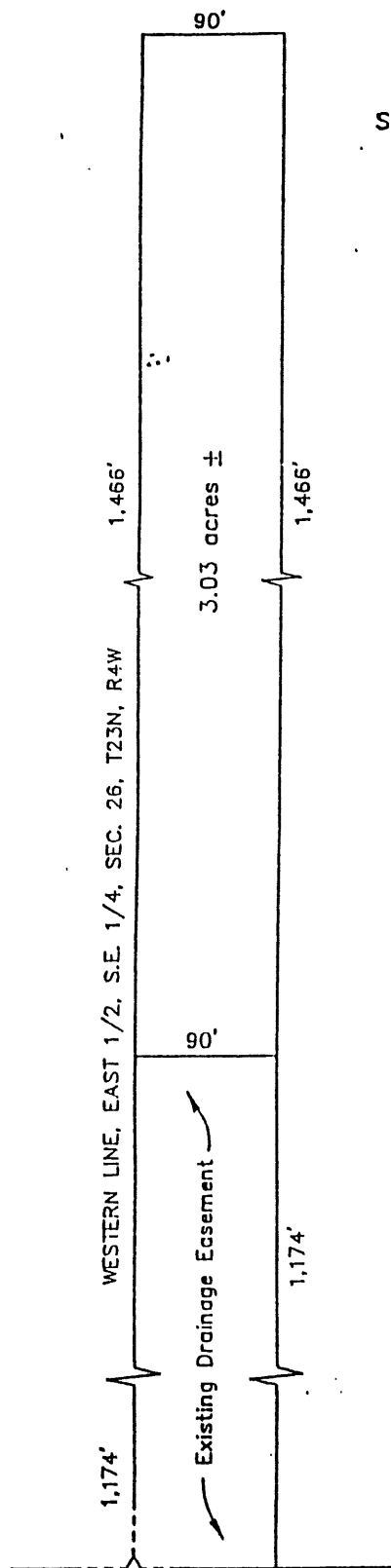
Mary E. Swink  
MARY E. SWINK, Notary Public  
Resident of TIPPECANOE, IN.

My Commission Expires:  
September 11, 1994



Majorie S. Gipe Trust  
Russell H. Gipe Trust  
Document Number 90-00647

SCALE 1" = 100'



**Description: Permanent Easement**

Part of the east half of the Southeast Quarter of Section 26, Township 23 North, Range 4 West, Fairfield Township, Tippecanoe County, Indiana, described as follows:

A strip of land, 90 feet of even width off of the western side of the following described real estate:

**PARCEL 1**

The east half of the southeast quarter of Section Twenty-six (26), Township Twenty-three (23) North, Range Four (4) West, containing eighty (80) acres.

Excepting the following described drainage easement:

**DRAINAGE EASEMENT**

A Part of the East half of the Southeast quarter of section 26, Township 23 North, Range 4 West in Tippecanoe County, Indiana, being more particularly described as follows, to-wit:

BEGINNING at the Southwest corner of said East half quarter section thence North on and along the West line of said half quarter section 1174.00 feet; thence East parallel to the South line of said quarter section 90 feet; thence South parallel to said west line 1174.00 feet to a point on the South line of said quarter section thence West on and along said South 90 feet to the point of beginning. Containing 2.43 acres more or less.

Said Permanent Easement contains 3.03 acres more or less.

This description prepared from existing deeds and drawings. No monuments were located or set.



CERTIFIED:

*David W. Hawkins*  
David W. Hawkins, P.E., L.S.

S12875

SW CORNER EAST 1/2, SOUTHEAST 1/4  
SECTION 26, TOWNSHIP 23 NORTH, RANGE 4 WEST

DATE: February 15, 1991